

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

In re:	)	
	)	
Drain Services Inc.	)	Case No. 23-30352
	)	(Chapter 11)
Debtor.	)	
_____	)	

**CHOICE FINANCIAL GROUP'S DEFAULT MOTION**

**Choice Financial Group**, (“Choice Bank”) a creditor of the above-named debtor Drain Services, Inc. (“Debtor”), by and through its undersigned counsel, hereby submits the following default motion pursuant to Drain Services, Inc.’s Second Amended Subchapter V Plan of Reorganization [Doc. 142] (the “Plan”) as provided for in pages 13-15 of the Plan:

A “Default Notice” as contemplated under the Plan dated October 16, 2024 (the “Default Notice”) was sent by Choice Bank’s attorney’s office to the Debtor and Debtor’s lawyer to the addresses listed at the top of the Default Notice by first class mail, postage prepaid, and by depositing them in the United States Mail at Grand Forks, North Dakota, and by electronic mail to the Debtor’s lawyer at the email address noted at the top of the Default Notice.

More than ten (10) days have passed since the Default Notice was served as contemplated in the Plan. Debtor has not yet cured the delinquencies identified in the Default Notice in that Debtor has not paid to Choice Bank the payment of \$4,689.28 that was due on or before October 15, 2024, required under Article 4, Class 2 of the Plan, nor has Debtor filed with the Bankruptcy Court the following items required under Section 8.07 of the Plan: (i) an unaudited statement of profit and loss for the most recently concluded calendar quarter; (ii) an unaudited balance sheet as of the last business day of the most recently concluded calendar quarter; and (iii) when the Debtor

has caused a federal tax return to be filed at any time during the most recently concluded calendar quarter, a copy of said federal tax return. While Debtor previously filed purported profit and loss statements (Doc. 167 and 171), and purported balance sheets (Doc. 166 and 170) the filed documents are entirely inadequate in light of the disclosed bank statements. They lack any details that would be sufficient to understand Debtor's operations and cash flows. Choice Bank believes the previously filed documents are not a good faith attempt to file the required financial statements required under the Plan.

### CONCLUSION

Pursuant to the foregoing reasons, and as contemplated in the Plan, Choice Bank respectfully requests that the Court enter an order lifting the automatic stay as contemplated in the Plan and such other relief as it just and equitable. A proposed order lifting the automatic stay is being filed herewith.

Dated: November 4, 2024

/s/John D. Schroeder

**JOHN D. SCHROEDER (ND ID #07147)**

[jschroeder@northdakotalaw.net](mailto:jschroeder@northdakotalaw.net)

ZIMNEY FOSTER P.C.

3100 South Columbia Road, Ste 200

Grand Forks, ND 58201

Phone: 701/772-8111 Fax: 701/772-7328

Attorneys for Choice Financial Group

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

In re:	)	
	)	Case No. 23-30352
Drain Services Inc.	)	(Chapter 11)
	)	
Debtor.	)	
_____	)	

**DECLARATION OF COUNSEL FOR CHOICE FINANCIAL GROUP IN SUPPORT OF  
IT'S DEFAULT MOTION**

**JOHN D. SCHROEDER**, being of legal age and fully competent to testify as to the matters provided below, declares and states as follows:

1. I am the attorney for Choice Financial Group, ("Choice Bank") with regard to is claims related to the above-named debtor Drain Services, Inc. ("Debtor"). I am personally familiar with the matters referred to in this Declaration. This Declaration is submitted in support of Choice Bank's default motion being filed pursuant to Drain Services, Inc's Second Amended Subchapter V Plan of Reorganization [Doc. 142] (the "Plan") as provided for in pages 13-15 of the Plan.

2. On October 16, 2024, I caused a "Default Notice" dated October 16, 2024, as contemplated under the Plan (the "Default Notice") to be sent to the Debtor and Debtor's lawyer to the addresses listed at the top of the Default Notice by first class mail, postage prepaid, and by depositing them in the United States Mail at Grand Forks, North Dakota, and by electronic mail to the Debtor's lawyer at the email address noted at the top of the Default Notice. A true and correct copy of the Default Notice that was mailed is attached hereto, along with a true and correct copy of the email to Debtor's attorney attaching the Default Notice.

3. Debtor has not filed with the Bankruptcy Court the following items required under Section 8.07 of the Plan: (i) an unaudited statement of profit and loss for the most recently

concluded calendar quarter; (ii) an unaudited balance sheet as of the last business day of the most recently concluded calendar quarter; and (iii) when the Debtor has caused a federal tax return to be filed at any time during the most recently concluded calendar quarter, a copy of said federal tax return. While Debtor previously filed purported profit and loss statements (Doc. 167 and 171), and purported balance sheets (Doc. 166 and 170) the filed documents are entirely inadequate in light of the disclosed bank statements. They lack any details that would be sufficient to understand Debtor's operations and cash flows. Choice Bank believes the previously filed documents are not a good faith attempt to file the required financial statements required under the Plan.

4. Pursuant to the foregoing reasons, and as contemplated in the Plan, Choice Bank respectfully requests that the Court enter an order lifting the automatic stay as contemplated in the Plan and such other relief as it just and equitable. A proposed order lifting the automatic stay is being filed herewith.

5. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on November 4, 2024, at Grand Forks, North Dakota.

*/s/John D. Schroeder*

**JOHN D. SCHROEDER (ND ID #07147)**

[jschroeder@northdakotalaw.net](mailto:jschroeder@northdakotalaw.net)

ZIMNEY FOSTER P.C.

3100 South Columbia Road, Ste 200

Grand Forks, ND 58201

Phone: 701/772-8111 Fax: 701/772-7328

Attorneys for Choice Financial Group

**Karen Syrstad**

---

**From:** Karen Syrstad  
**Sent:** Wednesday, October 16, 2024 1:37 PM  
**To:** Erik Ahlgren  
**Cc:** THOMAS KAPUSTA; Wencil, Sarah (USTP)  
**Subject:** Drain Services Inc. | North Dakota Bankruptcy No. 23-30352 - Notice of Default  
**Attachments:** 10.16.24 - Default Notice - Choice - DSI.pdf

Please see attached Notice of Default.

Karen Syrstad • Assistant to Attorneys Sandra Dittus and John Schroeder



**ZIMNEY FOSTER P.C.**  
3100 South Columbia Road  
Suite 200  
Grand Forks, ND 58201

Telephone: 701-772-8111  
Fax: 701-772-7328  
[northdakotalaw.net](http://northdakotalaw.net)

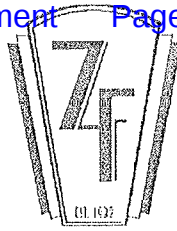
***Trusted Legal Advice Since 1932***

EMAIL DISCLAIMER: Please be advised that this transmittal may be a confidential attorney-client communication, may contain work product, or may otherwise be privileged or confidential. If you are not the intended recipient, please do not read, copy or re-transmit this communication. If the reader of this message is not the intended recipient, you are hereby notified that you have received this communication in error. If you have received this communication in error, please notify me by e-mail ([karensyrstad@northdakotalaw.net](mailto:karensyrstad@northdakotalaw.net)) or by telephone (701-772-8111) and delete this message and any attachments. Thank you in advance for your cooperation and assistance. Although we believe this email and any attachments are virus-free, we do not guarantee that it is virus-free, and we accept no liability for any loss or damage arising from its use.

CONTRACT DISCLAIMER: This email will not constitute a binding written agreement or stipulation unless the body of the message specifically provides that it contains my electronic signature. The signature block at the bottom of the email does not constitute my electronic signature for this purpose.

Sandra B. Dittus\*  
Tracy A. Kennedy\*~  
John D. Schroeder\*  
Jocelyn A. Dravitz\*  
Abigayle M. Lindgren\*  
Ryan W. Ames\*^  
Lauren K. Dub

\* Also licensed in Minnesota  
~ Also licensed in Arizona  
^ Also licensed in Montana



3100 South Columbia Road, Suite 200  
Grand Forks ND 58201  
(701) 772-8111  
(701) 772-7328 (fax)

Website: [www.northdakotalaw.net](http://www.northdakotalaw.net)  
email: [firm@northdakotalaw.net](mailto:firm@northdakotalaw.net)

## ZIMNEY FOSTER P.C.

Attorneys at Law

October 16, 2024

Drain Services Inc.  
415 Main Ave E, Unit 691  
West Fargo ND 58078

*Via First Class Mail*

Erik A. Ahlgren  
Ahlgren Law Office, PLLC  
220 W. Washington Ave, Ste 105,  
Fergus Falls, MN 56537  
[Erik@Ahlgrenlawoffice.net](mailto:Erik@Ahlgrenlawoffice.net)

*Via First Class Mail and email*

**RE: Drain Services Inc. | North Dakota Bankruptcy No. 23-30352  
Notice of Default under Drain Services, Inc's Second Amended Subchapter V Plan of  
Reorganization [Doc. 142]**

Dear Drain Services Inc. and Mr. Ahlgren,

As you know, I represent Choice Financial Group ("Choice Bank") with regard to the Bankruptcy matter where Drain Services Inc. is the Debtor, and Mr. Ahlgren is now its attorney, North Dakota Bankruptcy No. 23-30352. I am writing to you to give you each notice that Drain Services Inc. is in default of its obligations under the terms of the Drain Services, Inc's Second Amended Subchapter V Plan of Reorganization [Doc. 142] (the "Plan").

Please take notice that Drain Services Inc. is in default under the Plan for the reasons noted below:

1. Failure to pay to Choice Bank \$4,689.28 on or before October 15, 2024, required under Article 4, Class 2 of the Plan.
2. Failure to file with the Bankruptcy Court on or before the first business day succeeding the fourteenth calendar day of October 2024 the following items required under Section 8.07 of the Plan: (i) an unaudited statement of profit and loss for the most recently concluded calendar quarter; (ii) an unaudited balance sheet as of the last business day of the most recently concluded calendar quarter; and (iii) when the Debtor has caused a federal tax return to be filed at any time during the most recently concluded calendar quarter, a copy of said federal tax return.

*Trusted Legal Advice Since 1932*

Page | 2  
October 16, 2024

Note, Debtor previously filed profit and loss statements (Doc. 167 and 171), and balance sheets (Doc. 166 and 170) these are entirely inadequate in light of the disclosed bank statements. They lack any details that would be sufficient to understand Debtor's operations and cash flows. Choice Bank believes this is not a good faith attempt to file the required financial statements required under the Plan.

Note further, under applicable IRS regulations, the time for Debtor to have timely filed a 2023 tax return has now expired. While the extension document was previously filed with the court (Doc. 168), the tax return should have now been filed.

This letter is the Default Notice as defined in the Plan at Article 4, Class 2.

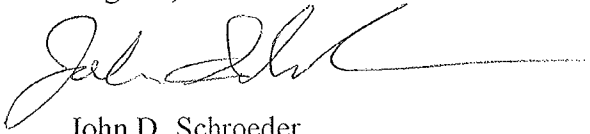
Drain Services Inc. may cure the delinquency within ten (10) calendar days of the mailing of this letter. Drain Services Inc. may cure the default by making the delinquent payment to Choice Bank at 4501 23rd Avenue S., Fargo, ND 58104, on or before October 28, 2024 (the first business day after expiration of the 10-day notice period).

Further, Debtor may cure the non-monetary defaults by filing with the Bankruptcy Court on or before October 28, 2024, the following items required under Section 8.07 of the Plan: (i) an unaudited statement of profit and loss for the most recently concluded calendar quarter (and the prior calendar quarter); (ii) an unaudited balance sheet as of the last business day of the most recently concluded calendar quarter (and the prior calendar quarter); and (iii) the Debtor's federal tax return.

If Debtor fails to cure the defaults by October 28, 2024, Choice Bank will bring before the court the Delinquency Motion as contemplated in the Plan.

Note this letter does not amend or supersede the notice sent to you on October 7, 2024. The time to cure the defaults noted in that letter are not extended by this notice.

Regards,



John D. Schroeder

Cc: Thomas Kaputsa, Subchapter V Trustee (via email only)  
Sarah J. Wencil, Office of the U.S. Trustee (via email only)  
Tim Ziemba, Choice Bank (via email only)

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

In re:	)	
	)	
Drain Services Inc.	)	Case No. 23-30352
	)	(Chapter 11)
Debtor.	)	
_____	)	

**DECLARATION OF TIMOTHY ZIEMBA OF CHOICE FINANCIAL GROUP IN  
SUPPORT OF IT'S DEFAULT MOTION**

**TIMOTHY ZIEMBA**, being of legal age and fully competent to testify as to the matters provided below, declares and states as follows:

1. I am the AVP - Special Assets Officer of Choice Financial Group, ("Choice Bank") assigned to handle Choice Bank's claims related to the above-named debtor Drain Services, Inc. ("Debtor"). I am personally familiar with the matters referred to in this Declaration. This Declaration is submitted in support of Choice Bank's default motion being filed pursuant to Drain Services, Inc's Second Amended Subchapter V Plan of Reorganization [Doc. 142] (the "Plan") as provided for in pages 13-15 of the Plan.

2. Choice Bank has not received the payment of \$4,689.28 that was due on or before October 15, 2024, required under Article 4, Class 2 of the Plan. I understand that a default notice was sent to Debtor and Debtor's lawyer on October 16, 2024, indicating that the payment was missed, but not payment has been made by Debtor since.

3. I have also reviewed the purported profit and loss statements filed by the Debtor with the Bankruptcy Court as Doc. 167 and 171, and the purported balance sheets filed by the Debtor as Doc. 166 and 170. The filed documents are entirely inadequate in that they do not attempt to detail the financial performance of the Debtor so that creditors can be informed of the Debtor's

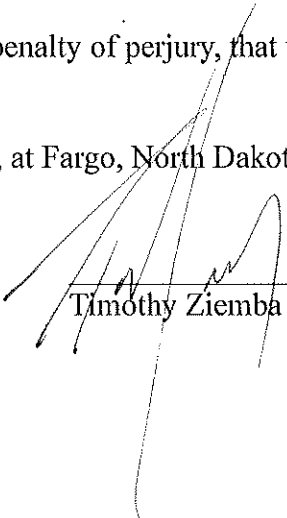


financial health post-petition, as contemplated in the Plan. These financial statements lack any details that would be sufficient to understand Debtor's operations and cash flows. Choice Bank believes the previously filed documents are not a good faith attempt to file the required financial statements required under the Plan.

4. Pursuant to the foregoing reasons, and as contemplated in the Plan, Choice Bank respectfully requests that the Court enter an order lifting the automatic stay as contemplated in the Plan and such other relief as it just and equitable. A proposed order lifting the automatic stay is being filed herewith.

5. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on November 4, 2024, at Fargo, North Dakota.



---

Timothy Ziemba

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

In re:	)	
	)	
Drain Services Inc.	)	Case No. 23-30352
	)	(Chapter 11)
Debtor.	)	
_____	)	

**ORDER GRANTING CHOICE FINANCIAL GROUP’S DEFAULT MOTION AND  
LIFTING AUTOMATIC STAY**

This matter came before the court on Choice Financial Group’s, (“Choice Bank”) default motion dated November 1, 2024, submitted pursuant to Drain Services, Inc’s Second Amended Subchapter V Plan of Reorganization [Doc. 142] (the “Plan”) as provided for in pages 13-15 of the Plan.

The court finds that a proper “Default Notice” as contemplated under the Plan dated October 16, 2024 (the “Default Notice”) was served on Debtor and Debtor’s lawyer as contemplated in the Plan, and that more than ten (10) days having passed since the Default Notice was served as contemplated in the Plan and the Debtor had not cured the delinquencies identified in the Default Notice in that Debtor has not paid to Choice Bank the payment of \$4,689.28 that was due on or before October 15, 2024, required under Article 4, Class 2 of the Plan, nor has Debtor filed file with the Bankruptcy Court the following items required under Section 8.07 of the Plan: (i) an unaudited statement of profit and loss for the most recently concluded calendar quarter; (ii) an unaudited balance sheet as of the last business day of the most recently concluded calendar quarter; and (iii) when the Debtor has caused a federal tax return to be filed at any time during the most recently concluded calendar quarter, a copy of said federal tax return. While Debtor previously filed purported profit and loss statements (Doc. 167 and 171), and purported balance

sheets (Doc. 166 and 170) the filed documents are entirely inadequate in providing details of Debtor's actual operations.

The court approves the Default Motion and accordingly hereby ORDERS as follows:

1. Choice Financial Group is granted lift of stay as follows.
2. The automatic stay imposed by 11 U.S.C. § 362(a) is terminated such that Choice Financial Group may exercise its rights and remedies under applicable non-bankruptcy law with respect to the following property:

All of Debtor's machinery and equipment owned as of October 2, 2023, or subsequently acquired through the use of cash collateral as provided in the court's *Order Granting Debtor's Motion for Leave to Use Cash Collateral* (Doc. 64), including the following:

Jetter Model Easy Kleen Groundhog With Accessories
2012 Ford F250 Super Duty VIN 1FTBF2A67CEC46010
2022 Wells Cargo Trailer VIN 7K61E2026NH000095
2015 Ford F250 VIN 1FT7W2B69FEA00939
2014 Ford F350 VIN 1FT8W3BT2EEA85007
2022 Midsota Bumper Hitch Trailer VIN 5JWBS2427NA102658
2016 Ford Transit Van VIN 1FTRS4XG2GKB13796
permaliner inversion drum and items
quik shot continuous inversion cannon and items
point repair bladder 4-6 and items
point repair bladder 1.5-3 and items
air delivery rods
concrete mixer and items
jackhammers (3), bits(many), rods, etc
dump trailer
picote milling machine and items
pb30 porta burst and items
hydraulic pump and power pack, hoses
ridgid 200 ft camera
ridgid 100 ft camera
CUSTOM 65 ft pool camera
ridgid locator
generator

air compressors (6)
ladders, hand tools, misc.
picote spin casting machine
cobra crawler (debtor claims was stolen)
kubota kx-040 excavator
kubota tilt-trailer
titan epoxy spraying pump & items
light ray uv cure
light ray uv cure items
aluminum trench shoring
dump trailer 2
tilt trailer 2
traffic control devices
portable jetting reel for combo truck
combo truck trailer, hoses, & items
Ibak crawler
grout injection equipment -- wisdot
bosch demolition equipment
combo truck extension hoses
picote milling machine and items (2)
uvcipp curing equipment and items
uvcipp enclosed trailer
equipment trailer
mytana 200 foot camera
point repair bladder and items 8"-10"
concrete mixer and items
concrete curing blankets
dewatering pumps (6)

3. Rule 4001(a)(3) is not applicable so that Choice Financial Group may immediately enforce its rights as provided in this order.

Dated:

\_\_\_\_\_  
Shon Hastings, Judge  
United States Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NORTH DAKOTA

In re:	)	
	)	Case No. 23-30352
Drain Services Inc.	)	(Chapter 11)
	)	
Debtor.	)	
_____	)	

**DECLARATION OF SERVICE**

**KAREN SYRSTAD**, a legal assistant in the office of Zimney Foster P.C., 3100 South Columbia Road, Ste. 200, Grand Forks, ND 58201, is of legal age and not a party to or interested in the above-entitled matter and declares, that on November 4, 2024, she served the following:

1. **CHOICE FINANCIAL GROUP'S DEFAULT MOTION**
2. **DECLARATION OF COUNSEL FOR CHOICE FINANCIAL GROUP IN SUPPORT OF ITS DEFAULT MOTION**
3. **DECLARATION OF TIMOTHY ZIEMBA OF CHOICE FINANCIAL GROUP IN SUPPORT OF ITS DEFAULT MOTION**
4. **PROPOSED ORDER GRANTING CHOICE FINANCIAL GROUP'S DEFAULT MOTION AND LIFTING AUTOMATIC STAY**
5. **THIS DECLARATION OF SERVICE**

to the people who are Filing Users, by automatic e-mail notification pursuant to the Electronic Case Filing System and this notice constitutes service, and by sending the same in a postage paid envelope addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail in Grand Forks, North Dakota.

**Erik A. Ahlgren**  
Ahlgren Law Office, PLLC  
220 West Washington Ave, Ste 105  
Fergus Falls MN 56537  
[erik@ahlgrenlawoffice.net](mailto:erik@ahlgrenlawoffice.net)  
**Attorney for Debtor**

**Drain Services Inc.**  
415 Main Ave E, Unit 691  
West Fargo ND 58078

**Sarah J. Wencil**  
Office of the U.S. Trustee  
Suite 1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis MN 55415  
[sarah.j.wencil@usdoj.gov](mailto:sarah.j.wencil@usdoj.gov)

**Robert B. Rashcke**  
Assistant U.S. Trustee  
Suite 1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: November 4, 2024 at Grand Forks, North Dakota

/s/ Karen Syrstad

**KAREN SYRSTAD**